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January 17, 2003

Mr. Barry L. Carpenter
Deputy Administrator
Country of Origin Labelling Program
USDA Agricultural Marketing Service
Stop 0249, Room 2092-S
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0249

Dear Mr. Carpenter,

The Agricultural Marketing Service has encouraged the submission of comments addressing the "utility" of the interim voluntary guidelines for the implementation of the Country-of-Origin Labelling (COOL) provision of the *Farm Security and Rural Investment (FSRI) Act of 2002*. In the short paper attached, we have outlined specific comments and questions for your consideration. We offer these comments without prejudice to our concern that the COOL provision of the *FSRI Act* will have a trade restricting effect regardless of how it is implemented.

The gist of our comments is that the definitions and the framework of the voluntary consumer notification, product marking and record-keeping program for COOL outlined in the guidelines are fundamentally flawed and unworkable, and appear to place onerous and unreasonable demands on industry. In light of these complexities, we understand why U.S. industry has chosen overwhelmingly not to participate in these "voluntary" guidelines.

Given the wide-reaching negative consequences of implementing the COOL provision of the *FSRI Act*, particularly for U.S. industry, we believe that Congress should repeal the COOL legislation. In the meantime, Canada will continue to monitor developments and to assess the consistency of proposed COOL regulations with international trade obligations.

If you require any clarification, please contact either myself or John Masswohl at 202-682-1740.

Yours sincerely,

William R. Crosbie
Minister-Counsellor
(Trade and Economic Policy)

C.c.: Ms. Sharon Bomer
Director of Agricultural Affairs & Technical Barriers to Trade
Office of the U.S. Trade Representative

Ms. Patricia Sheikh
Deputy Administrator, International Trade Policy
Foreign Agricultural Service
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GOVERNMENT OF CANADA
COMMENTS ON COOL INTERIM VOLUNTARY GUIDELINES

INTRODUCTION

The Government of Canada is concerned that the Country-of-Origin Labelling (COOL) provisions of the *Farm Security and Rural Investment (FSRI) Act* will restrict trade, particularly for the red meat sector but also for other covered commodities sourced in Canada that are currently co-mingled with U.S. product. This will occur no matter how the provisions are implemented. Given the complexity and the magnitude of the wide-reaching negative consequences of implementing the COOL provision of the *FSRI Act*, we find that COOL is neither in the best interests of the U.S. nor of its trading partners.

Without prejudice to our view that the COOL provision of the *FSRI Act* should be reconsidered with a view to its withdrawal, the purpose of this paper is to outline our specific concerns about the "utility" of the interim voluntary guidelines that took effect upon publication in the *Federal Register* on October 11, 2002.

1. Purpose and "Utility" of COOL are Unsubstantiated

a) Will consumers pay for it? The interim draft guidelines state that "consumer information" is the objective of the COOL provisions. However, neither the *FSRI Act* nor the guidelines demonstrate broad consumer demand for mandatory country-of-origin labelling. Indeed, if it were the case that significant demand for the type of information conveyed by COOL existed, there would be a strong market incentive for industry to act on a voluntary basis. A study conducted by the Food Safety and Inspection Service in 2000 found no evidence that this is the case.[1] Some consumers may want country-of-origin information, but there is no indication that they are willing to pay more for food so labelled. If small pockets of consumers willing to pay more for food with country of origin information exist, it should be conveyed to them in a way that permits markets to function with minimum distortion.

b) Why COOL only for some? If informing consumers is the objective of COOL, we are at a loss to understand why all foods are not covered. For example, poultry meat is not covered even though it is a direct competitor of red meat and fish at retail. Does the U.S. believe that acceptable consumer information systems already exist for poultry, and other commodities that are not covered? Indeed, the COOL guidelines state that "for agricultural commodities that cannot be covered under these guidelines, the Agency has different authority to develop voluntary user-fee programs to certify that a non-covered commodity is a product of the United States". It would therefore appear that less trade-restrictive alternatives that fulfil the "consumer information" objective exist and should also be used for the covered commodities.

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[1] Food Safety and Inspection Service, United States Department of Agriculture, *Mandatory Country of Origin Labelling of Imported Fresh Muscle Cuts of Beef and Lamb*, January, 2000.

c) <u>False claims of food safety purpose</u>. Although not referenced in the COOL guidelines, many COOL proponents have explicitly stated that COOL has a food safety objective. The implication is that US consumers would be able to avoid alleged "unsafe" or "substandard" imported food and select alleged "safe" American food. We find this tact highly objectionable. Imported products and products of mixed origin must pass rigorous inspection and quality controls in the country of origin that are deemed by USDA and FDA to be equivalent to the U.S. systems. We are also perplexed why the U.S. Government would propose an initiative that implies a difference in the quality (and safety) of foods processed in the U.S. from imported ingredients versus those made from only U.S. ingredients (e.g. frozen vegetables, bagged salad, french fries).

The Canadian agriculture and food industry enjoys a particularly exceptional international reputation for high quality, safe food products. As almost 95% of food-borne safety risks occur from the processing point forward, it will be extremely important to take measures to ensure that information conveyed by COOL is not misinterpreted by consumers. Canada's enviable reputation could be significantly marred in the event that a health or sanitary problem occurring in a U.S. production facility is attributed to Canadian producers because of the mere appearance of Canada on the label.

d) <u>Consumer confusion</u>. The "consumer information" objective is further undermined by COOL's inconsistency with other U.S. origin policies. For example, it is conceivable that products from a single animal could be required to bear at least two or three different country-of-origin labels, each with a distinct meaning. In a case where a Canadian-born cow is raised and slaughtered in the U.S., there may be portions of the animal destined for export which would bear a "Product of USA" label, whereas the cuts destined for the domestic retail market would be labelled "From Canadian Cattle raised and processed in the U.S." Trimmings from this same animal that are made into ground beef, would likely be mingled with product from a number of different countries requiring yet a third application of the new country-of-origin label. Consumers will likely be confused by the number of different meanings assigned to country of origin.

e) <u>Particularly confusing for mixed product</u>. The section of the COOL guidelines dealing with ground beef is worthy of special examination with respect to its lack of utility to consumers and unworkability. Given the reality of how ground beef is made, we can envision packages of ground beef sold in the US being required to bear labels such as,

> *"Origin of this ground beef is U.S.;*
> *cattle born in Canada raised and processed in the U.S.;*
> *cattle born in Mexico raised and processed in the U.S.;*
> *cattle born in the U.S. raised in Canada and processed in the U.S.;*
> *and Canadian".*

It is widely known that the sources of beef trimmings used to make ground beef changes almost constantly since there could be trimmings from hundreds of animals in a single production lot. Thus documenting country-of-origin will be extremely complex and problematic for processors operating in the U.S. Of course, U.S. retailers could avoid this burden by turning to ground beef produced entirely outside the U.S.

There are many additional "covered commodities" that are produced only on a seasonal or a fluctuating daily basis in the U.S., e.g. some fruit, vegetables and seafood. In order to provide consumers with year-round availability, products could be imported from multiple countries with sources fluctuating constantly. Producers will need to re-think their sourcing practices with a view to reducing their potential recordkeeping and inventory management costs.

For products that are commingled at retail, such as live fish and lobster, it is difficult to conceive of a practical method to label these products on an individual basis. Options for retailers would seem to include investing in additional tanks (and floor space) to physically segregate fish or to change their sourcing practices.

f) A bad policy overall. In sum, we believe that the "consumer information" objective is either disingenuous or simply ill conceived. Ultimately the provision will result in higher food costs and less choice for consumers.

2. COOL will Erode Competitiveness of both Canada and the U.S.

a) Less freedom for U.S. & Canadian producers. Free trade in North America has resulted in a highly integrated market for live animals and meat products allowing U.S. and Canadian producers, packing plants and other processors to compete effectively at home and around the world. A similar situation exists for some fish, shellfish and vegetable products, including New England scrod, lobster and potatoes. If the interim voluntary guidelines become mandatory regulations, the associated costs will become an additional factor in individual operators' business decisions. Industry's focus may therefore shift away from reacting to market factors to having to increasingly consider record-keeping burden and labelling costs. Inevitably, Canadian and U.S. products would be at a competitive price disadvantage both in the U.S. and internationally.

b) Undoes hard earned benefits for Americans and Canadians. Industries in both the U.S. and Canada have worked hard over the past 14 years since the Canada-U.S. free trade agreement was implemented to try to make national origin irrelevant in business and consumer decisions. The obvious benefit of this is no more simply put than in the fact that Canada has grown to surpass all other countries as the top importer of U.S. agri-food exports. It would therefore be extremely unfortunate if COOL causes some Canadian and some U.S. firms to have to distance themselves from our mutually beneficial relationship. Such decisions could mean that bilateral efforts to encourage expanded reciprocal trade, such as the relatively recent feeder cattle initiatives, become no longer commercially viable.

3. Administrative / Verification Issues

a) $2 billion - maybe more? Accurate verifiable records are clearly necessary to backup the COOL provisions. According to the Agricultural Marketing Service's own estimates, the cost of

record keeping alone will impose an initial $2 billion burden on U.S. producers and retailers.[2] Some claim the figure is overstated, while others point out that the estimate omits a number of significant costs including the costs of a distorted market that would continue on an annual basis. Canada will be providing further comments on the estimate under a separate submission. However, there are several critical administrative and verification issues not addressed in the COOL guidelines.

b) How will retailers know? Because the *FSRI Act* prohibits USDA from establishing a mandatory animal identification system, the burden falls upon retailers to document the production stages in order to verify consistency with COOL requirements. However, neither existing programs nor the guidelines offer sufficient guidance on what type of records are required to meet the *FSRI Act's* "born, raised and slaughtered" definition for U.S. origin. In particular, there is no guidance on how producers should document and verify the birth of live animals.

c) Record keeping must start now. Muscle cuts of meat that will be available for retail sale after September 30, 2004 will come from animals that are born as early as the Spring of 2003. Therefore, in order to comply with the scheduled September 30, 2004 implementation of the mandatory COOL provision, all U.S. producers, growers, handlers, packers, processors, importers and retailers of covered commodities will require an operational record-keeping program in place well in advance of that date. We are not sure that the majority of U.S. producers realize this fact and are undertaking the necessary steps to be ready this spring.

d) Already too late for some. Mature animals that enter the manufacturing meat chain, used primarily (but not exclusively) to produce ground beef, pork or lamb, will have passed the "born and raised" production points far in advance of implementation of the COOL provision. There is no reliable method of documenting these stages *ex post facto*. Looking forward, the two-year record retention requirement outlined is inadequate, as some animals' productive lives can extend up to 10 or more years. Unless production stages can be verified, these animals would no longer be marketable in the U.S. for human consumption. This would reduce the salvage value of breeding and dairy herds to that of pet food. Does USDA have a plan to address this problem?

e) "Processed" still not clear. The definitions for "processed food item" used to verify an exclusion to the COOL provision are not clear. The guidance provided in the guidelines is inconsistent across product categories and as a result has generated many questions from Canadian industry. For example, the addition of any ingredient to ground beef, including water, excludes the commodity from COOL requirements. However, the addition of similar ingredients to muscle cuts or fruit and vegetables do not result in an exclusion. The opportunity for discretion in interpreting these definitions is too broad, and may lead to enforcement only for imported products, depending on the frequency and extent of surveillance activities yet to be defined.

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[2]Agricultural Marketing Service, USDA, *Notice of Request for Emergency Approval of a New Information Collection*, November, 2002.

f) <u>"Wild" vs "Farm-raised"</u>. The *FSRI Act* stipulates that covered fish and shellfish products, in addition to country-of-origin information by production points, must also be labelled as to whether they are "farm raised" or "wild", as defined by the guidelines. However, the guidelines do not indicate how this information will be verified for imported products. Unlike the default customs determination for country-of-origin, "farm raised" or "wild" declarations are not currently made at the border. What is USDA's advice that would help the industry address this problem in a consistent manner?

4. Trade Considerations

a) <u>Foreign-born treated different than U.S.-born</u>. Canadian industry reports that major U.S. packers, wholesalers and retailers have indicated that if COOL becomes mandatory they would deal strictly with U.S. product in order to minimize the complexity and costs involved with segregation. U.S. distributors who currently fill two million independent pork producer production spaces with segregated early-weaned (SEW) piglets from Canada, are writing clauses into new contracts and/or warning that they will invoke existing provisions to cancel these contracts should mandatory COOL impede sales of mixed-origin hogs to packers.

b) <u>Inconsistent with international standard</u>. Further, Canada notes that the COOL provisions are not based on the relevant international standard. The *Codex General Standard for the Labelling of Prepackaged Food* states that when food undergoes processing in a second country that changes its nature, the country in which the processing is performed must be considered to be the country of origin for the purposes of labelling.

c) <u>"Product of Canada" belongs to Canadians</u>. We also wish to be clear that, Canada would oppose any U.S. exports into any market bearing a "Product of Canada" statement on the label where the product has been transformed and is clearly no longer Canadian. We would expect the United States Government and U.S. producers to share such concerns with respect to U.S. products in third-country markets in the event other countries adopt similar COOL legislation.

Conclusion

The utility of the provisions is questionable. COOL imposes onerous costs on covered commodities, is administratively burdensome, difficult, if not impossible to enforce and is trade distorting. For all of these reasons, COOL will impair the ability of U.S. producers and processors of covered commodities to compete effectively.

<u>Canada urges the repeal of the entire COOL provision</u>.